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IN THE

Supreme Court of the United States

NO. 300

OCTOBER TERM, 1959

GEORGE J. WAGNER, Appellant

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICIANS, LOCAL #1305, an unincorporated union, and THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

On Appeal from the Supreme Court of Pennsylvania

JURISDICTIONAL STATEMENT

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IN THE

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NO. .....

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GEORGE J. WAGNER, Appellant

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICIANS, LOCAL #1305, an unincorporated union, and THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

On Appeal from the Supreme Court of Pennsylvania

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Pennsylvania Supreme Court entered April 20, 1959, sustaining a judgment of the Court of Common Pleas of Allegheny County, Pennsylvania, dismissing complaint, and respectfully submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

The opinion of the Pennsylvania Supreme Court is reported at 150 A 2d 530. The opinion of the Allegheny County Court of Common Pleas is reported at 1964 October Term, 1957, filed February 24, 1958. Copies of the Supreme Court Opinion and Order and the Chancellor's Opinion and judgment are attached hereto as Appendix A and Appendix B.

JURISDICTION

This complaint was brought in equity by an electrician, formerly employed by defendant railroad company and ousted from membership in his Union, an unincorporated association, by defendant Union for late payment of dues. Discharge from the complainant's employment was at the insistence of defendant Union, which accepted his dues in full before procuring his discharge from employment and ousting him from membership. Under the Constitution of the Commonwealth of Pennsylvania, exclusive jurisdiction over unincorporated associations is vested in courts of equity. Equity, once having jurisdiction, decides all rights of the parties. The opinion of the Pennsylvania Courts holds that even this jurisdiction of an equity court is taken away by the Railway Labor Act of 1951, 45 U.S.C.A. 151 et seq.

Judgment of the Pennsylvania Supreme Court was entered on April 20, 1959, and Notice of Appeal was filed in that Court on June 19, 1959. The jurisdiction of the United States Supreme Court to review this Decision by direct appeal is conferred by Title 28, United States Code, Sections 1257 (2) and 2101 (c); or, in the alternative, to review upon certiorari pursuant to Sections 1257 (3) and 2103. It is felt that by reason of the State Supreme Court's disregard of the holdings of this Honorable Court in *International Association of Machinists v. Gonzales*, 356 U.S. 617 (May 26, 1958) and *United Automobile Workers v. Russell*, 356 U.S. 634, before entry of judgment below, an appeal was proper.

QUESTIONS PRESENTED

1. Does the National Railway Labor Act deprive a state Court of Equity of its constitutional jurisdiction to reinstate an illegally ousted member of an unincorporated labor union?

Affirmed below.

2. Where no labor dispute is charged, and no proceeding lodged or pending before the National Railroad Adjustment Board, may an illegally ousted member of the electrical union, discharged for delinquent payment of dues, sue in equity in a state court, and seek reinstatement as a member, together with damages for wrongful discharge against the union and railroad?

Denied below.

3. Does the Railway Labor Act vest exclusive jurisdiction over the internal affairs of an unincorporated labor union under contract with a railroad?

Affirmed below.

STATUTES INVOLVED

Act of Congress of Jan. 10, 1951, c. 1220, 64 Stat. 1238, 45 U.S.C. par 151 et seq., known as the Railway Labor Act.

Act of the Commonwealth of Pennsylvania of June 16, 1836, P. L. 784, par. 13, 17 Purdon Supp. 281.

Article V, sec. 20 of the Pennsylvania Constitution.

STATEMENT

Prior to December 14, 1955 the plaintiff was employed by the defendant railroad company as an electrician. On that date his employment was terminated by the railroad on demand of the union by reason of the plaintiff's "failure to produce documentary proof indicating compliance with the union shop agreement—", solely because the union claimed that the plaintiff had failed to tender his dues in accordance with its by-law requirements. IT IS ADMITTED THAT THE DUES WERE PAID IN FULL TOGETHER WITH REINSTATEMENT FEES PRIOR TO THE DISCHARGE.

The plaintiff seeks damages in a common law action for the deprivation of his working rights and reinstatement into defendant union.

Both the former employer and the union filed Preliminary Objections to the jurisdiction of the Court of Equity and the Court en banc sustained the Objections and dismissed the Complaint. The Court held that since "plaintiff is seeking reinstatement into the union,—it becomes necessary to interpret his right under the agreement by the defendant railroad and defendant union—" and that the National Railroad Adjustment Board has exclusive jurisdiction.

The Pennsylvania Supreme Court sustained the Common Pleas Court, per curiam.

THE QUESTIONS ARE SUBSTANTIAL

The Pennsylvania Supreme Court had closed the door to suits by members of unincorporated railroad labor unions who have been ousted from membership, and is now, by virtue of the decision appealed from, requiring that such members file their claims with the National Railroad Adjustment Board. We are certain that this Court will take judicial notice of the fact that the National Railroad Adjustment Board will not even entertain such a petition.

It has long been the right of a member of an unincorporated association to seek redress against his own association exclusively in a Court of Equity under the Pennsylvania Constitution of 1874, and under the Act of June 16, 1836, P.L. 784, Par. 13, 17 P.S. 281.

Once an Equity Court asserts jurisdiction, it has uniformly been held that it may resolve all of the lawful rights of the parties, including an award of damages.

Apparently, not only is the Pennsylvania Supreme Court under the impression that the Railway Labor Act deprives equity of jurisdiction in the circumstances asserted in the complaint, but some Circuit and District Courts have held likewise.

The Court below was apparently confused by a number of decisions recently handed down by the United States Courts in connection with the exclusiveness of jurisdiction of administrative tribunals and the Federal Courts. Such confusion, while understandable for a period of time, should not now exist in view of the very strong language of the United States Supreme Court in some outstanding cases. It is the contention of the appellant that:

The Questions Are Substantial.

1. An Equity Court has jurisdiction of the case.

2. The Plaintiff was improperly discharged and ousted from union membership.

3. Both Defendants are liable in one action.

4. The Court below erred in sustaining preliminary objections to its jurisdiction.

5. The Court below erred in dismissing the complaint.

The complaint as amended is grounded upon a charge that the employer railroad at the insistence of the defendant union wrongfully discharged the plaintiff because he "—failed to produce documentary proof indicating that (plaintiff is) in compliance with the union shop agreement—", as averred in paragraph 5.

The sole question involved in fixing liability upon the defendants for the wrongful discharge is whether the plaintiff was in fact and in law in good financial standing in the union as of December 14, 1955.

No dispute exists between the carrier railroad and the contracting union; actually, for the purpose of this argument, they are in a like position—both being responsible for the deprivation of the plaintiff's legal status.

The 1951 Amendment to the Railway Labor Act, 45 U.S.C.A. 152, permits carriers and recognized international unions to enter into "union shop" agreements. As for the Act, this Honorable Court will take judicial notice that such union shop requirement (paragraph eleventh) compels the union having the advantage of such a contract provision, to extend to all eligible workers the right of membership; further, that only good

financial standing is required of such member as a basis for continuation of employment.

Where an employee has paid his dues and financial obligations prior to the date of discharge, as must here be accepted, (paragraph 6 of complaint) and the employer still discharges him as though he were not in good financial standing, upon the insistence of the union, especially where the employer is fully advised of the facts (paragraph 8 of complaint), does the employee have access to a common law court for damages?

This case is to be distinguished from any wherein a labor dispute is pending between the union and the employer; it is further to be distinguished from the line of cases wherein a member is seeking to re-establish rights as an employee within an employer bargaining unit. This is simply a case where a wrongful discharge has been effected through the joint fault of the employer and union in violation of a federal statute.

While considerable confusion has pervaded the decisions of state and federal courts with respect to the matter of jurisdiction in the labor relations field, as regards the jurisdiction of the Railroad Adjustment Board and the Mediation Board set up under the Railway Labor Act and its amendments, there have been a number of clarifying decisions by the United States Supreme Court. Beginning with the often-cited case of *Moore v. Illinois Central R.R. Co.*, 312 US 630, it has been held that an employee may, without first resorting to the machinery established by the Railway Labor Act; bring suit against an interstate railroad in a court of competent jurisdiction for damages resulting from an unlawful or unjustified discharge from his employment.

The *Moore* decision has been followed in numerous cases; *Kelly v. Nashville, C. St. L. Ry.*, 75 FS 737; *Condol v. B&O R. Co.*, 199 F2d 400; *National Railroad Adjustment Board v. Chicago R.I.& PRR.*, 189 F2d 813.

It has likewise been held that a discharged railroad employee may maintain an action for reinstatement without the necessity of exhausting administrative or collective bargaining remedies, the New Jersey Supreme Court holding that such remedies were concurrent with the judicial remedies available to such employee; *Coyle v. Erie R. Co.*, 59 A2d 817, 142 N.J. Chancery 306.

The New Jersey Supreme Court likewise held that an employee had access to court procedures in the case of *Marchitte v. Cent. R. Co., of N. J.*, 1952, 88 A2d 851, wherein the Court judicially took notice that the Mediation Board had established a practice of accepting complaints only from the union or the railroad.

In 1954 the Wisconsin United States Circuit Court of Appeals, in the case of *Walters v. Chic. & NW R. Co.*, 216 F2d 332, held that a state court has jurisdiction of such matters.

Likewise, the Seventh Circuit Court, in *Adams v. NYC & St. L. R. Co.*, 121 F2d 808, 810, had declared:

> "In view of the Supreme Court's clarifying language as to the intended scope of the Railway Labor Act, 45 U.S.C.A. paragraph 151 et seq., we can definitely state that the employee's action may be brought at their election, either in a court or settled by the administrative remedies prescribed by the Act".

Although not precisely in point with respect to the fact situation in this case, nevertheless definitely illus-

trating the non-exclusive jurisdiction of the Boards set up under the Railway Labor Act and its amendments, the Supreme Court of the United States, in reversing numerous district courts which had held to the contrary, has repeatedly declared that courts have jurisdiction in cases involving discriminatory practices against individual employees supposedly subject to and protected by collective bargaining contracts; *Steele v. Louisville & N. R. C.*, 323 U.S. 192; *Tunstall v. Brotherhood of Firemen*, 338 U.S. 232; *Brotherhood v. Howard*, 343 U.S. 768; *Syres v. Oil Workers Union*, 350 U.S. 892; *Mitchell v. Gulf M. & O. R. Co.*, 190 F2d 308; *Richardson v. Texas & N.O.R. Co.*, 140 FS 215, recently decided by the United States Supreme Court in an opinion by Mr. Justice Hugo Black, who wrote: "If these allegations are proven, there has been a manifest breach of the union's statutory duty to represent fairly and without hostile discrimination all of the employees in the bargaining unit".

While a companion line of cases, including decisions in the United States Circuit Court and in the Supreme Court, some of which have been cited in the briefs of defendants, holds that the Board of Adjustment has exclusive jurisdiction in some cases, it is clear that the majority of these cases fall within the group inspired, instigated, or brought by the organization known as The United Railroad Operating Crafts, referred to as UROC, and organized after the union shop provision of the 1951 amendment to the Railway Labor Act. Clearly all of these cases, including *Bohnen v. B&O, Slocum v. Del. L. & W.R., Alabaugh v. B&O*, and *O.R.C. v. Pitney*, fall within the category wherein a dispute existed between the complaining organization and the employer in regards to membership within a recognized union under the

law. These cases are clearly and legally distinguished on both the facts and the law from the present case.

In the recent case of *International Association of Machinists, etc., v. Gonzales,* 356 U.S. 617, the U.S. Supreme Court specifically says: ". . . . the protection of union members in their rights as members from arbitrary conduct by unions and union officers has not been undertaken by federal law, and indeed the assertion of any such power has been expressly denied".

The most recent pronouncement on the subject, the U.S. Supreme Court decision in *United Auto. Workers v. Russell,* 356 U.S. 634, reaffirms that Court's holding that: ". . . the possibility of partial relief from the Board does not, . . . deprive a party of available state remedies for all damages suffered." This authority is followed by the Second Circuit in *Cunningham v. Erie R.R. Co. et al.,* 266 F 2d 411.

Significantly, and in point, the National Labor Relations Board, in two recent decisions, has held that an employee who has either paid or tendered his financial obligations to the union before actual discharge, is entitled after discharge to reinstatement with full back pay, *National Labor Relations Board v. International Association of Machinists, Lodge 1021,* 116 NLRB 92, 247 F 2d 414; *Aluminum Workers International Union, Local 135 v. NLRB,* 111 NLRB 411, 230 F2d 515, wherein it is stated "A full and unqualified tender made at any time prior to actual discharge and without regard as to when the request for discharge may have been made, is a proper tender and subsequent discharge based upon that request is unlawful.".

The Questions Are Substantial.

As to the broad base of equity jurisdiction over unincorporated associations there can certainly be no question; *Maisch v. Order of Americus,* 223 Pa. 199; *McDonnell v. Jones,* 48 PLJ, 53; *13 Std. Pa. Prac.,* par. 4, page 75-76 and citations therein; *Act of June 16, 1836* P.L. 784, par. 13, 17 Purd. Supp. 281; even though assumpsit may also lie; *Pyzdrowski v. Tarkowski,* 137 Pa. Super. 118.

The complaint clearly sets out a cause of action based upon an unlawful interference with a right to work by both defendants. Such interference has long constituted a common law cause of action; *Dorrington v. Manning,* 135 Pa. Super. 194; *Tenn. Coal, Iron & R. Co., v. Kelly,* 163 Ala., 348; *O.R.C. v. Jones,* 48 Cal., 80; *Wyeman v. Deady,* 79 Conn., 414; *Chambers v. Probst,* 145 Ky., 383; *Hanson v. Innes,* 211 Mass., 301; *Carnes v. St. Paul Union etc. Co.,* 164 Minn., 457.

The fact that employment is terminable at will, does not affect the employees' right of action; *Truax v. Raich,* 239 U.S. 33.

Unless the Pennsylvania Courts are corrected, substantial rights will have been lost to union members, who will be without remedy either in a Court or before an Administrative Board.

WHEREFORE, it is respectfully submitted that the questions presented by this appeal are substantial and that they are of great public importance.

Respectfully submitted,

HARRY ALAN SHERMAN
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Attorneys for Appellants

APPENDIX A.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

GEORGE J. WAGNER, Appellant, v. INTERNATIONAL BROTHERHOOD OF ELECTRICIANS, LOCAL #1305, an unincorporated union, and the PITTSBURGH & LAKE ERIE RAILROAD COMPANY.	No. 139 March Term, 1958 Appeal from Decree of the Court of Common Pleas of Allegheny County at No. 1964 October Term, 1957, in equity.

Opinion of the Court

Filed April 20, 1959

PER CURIAM

The decree of the court below dismissing the plaintiff's complaint without prejudice is affirmed on the opinion of Judge Cercone, reported at — D. & C. 2d —; the appellant for costs.

APPENDIX B.

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE J. WAGNER, Plaintiff,
v.
INTERNATIONAL BROTHERHOOD OF ELECTRICIANS, LOCAL 1305, an unincorporated union, and the PITTSBURGH & LAKE ERIE RAILROAD COMPANY, Defendants.

No. 1964
October Term,
1957

Opinion

Before: MCNAUGHER, P.J., KENNEDY and CERCONE, JJ.

CERCONE, J.

This matter comes before the court en banc on defendants' preliminary objections to plaintiff's complaint in equity.

Plaintiff was employed as an electrician by the defendant Railroad, and was also a member of the defendant International Brotherhood of Electricians, Local 1305, an unincorporated union. The defendants were parties to a union shop labor relations contract under which the employment rights of plaintiff and other members of said union were defined. Under the contract employees of defendant Railroad were required to keep their dues paid up as a condition for continuing employment with the defendant Railroad.

On notice by the Union to the Railroad that plaintiff had failed to maintain his financial standing, plain-

tiff was dismissed from his employment. By this action in equity, plaintiff originally sought mandatory injunctive relief compelling his reinstatement to membership in the defendant Union, restoration of a job with the defendant Railroad, monetary relief for lost earnings resulting from the termination of his employment, additional damages for unspecified "inconvenience, loss of opportunities and advantages" and cost of these proceedings. Prior to the hearing on the preliminary objections filed by both defendants, plaintiff filed an amendment to his complaint abandoning that portion of his action seeking reinstatement to his position with the Railroad and leaving the complaint otherwise unchanged.

Defendants contend in their preliminary objections that the court lacks jurisdiction of the said matter by reason of the Act of Congress known as the Railway Labor Act (45 U.S.C. Sec. 151, et seq), whereby the National Railroad Adjustment Board is vested with exclusive jurisdiction of disputes concerning the interpretation and application of collective bargaining agreements in the railroad industry, including such claims as asserted here by plaintiff. The preliminary objections also call the court's attention to plaintiff's failure to plead a sufficient cause of action.

Plaintiff, in abandoning his claim for reinstatement of his job, apparently proceeds on the theory that he has a right to be heard in this court for damages arising out of wrongful discharge, together with other rights flowing out of his claim for reinstatement to membership in the Union.

The recent case of *Fawcett v. Monongahela Rwy. Co.*, 391 Pa. 134 (1958), throws sufficient light upon the

instant case to enable the court to decide the question of jurisdiction. In the *Fawcett* case plaintiff, a yardmaster for the defendant company, was dismissed after a hearing because he was found guilty of conduct unbecoming an employee. Plaintiff brought an action in assumpsit claiming damages for lost wages and benefits as a result of the unlawful discharge. Defendant company contended on preliminary objections that the court did not have jurisdiction of the cause, and that jurisdiction was under and limited to the Railway Labor Act. The lower court sustained the preliminary objections. The Supreme Court reversed the lower court, and in so doing quoted the case of Transcontinental Air v. Koppel, 345 U. S. 653, at 660-661, where the court stated:

> "The important point is that while the employment contract conforms to the policy of the Railway Labor Act and the Act provides a procedure for handling grievances so as to avoid litigation and interruptions of service, the Act does not deprive an employee of his right to sue his employer for an unlawful discharge if the employee chooses to do so.
>
> "'(W)e find nothing in that (Railway Labor) Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court . . . The District Court and the Circuit Court of Appeals properly decided that petitioner was not required by the Railway Labor Act to seek adjustment of his controversy with the railroad as a prequisite to suit for wrongful discharge.' Moore v Illinois Central R. Co., 312 U.S. 630, 634, 636.

"We amplified the foregoing statement in Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 244, as follows: 'Moore (in 312 U.S. 630) was discharged by the railroad. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. As we there held, the Railway Labor Act does not bar courts from adjudicating such cases . . .'

"The result is that, whereas, under the Railway Labor Act, the Adjustment Board has exclusive jurisdiction to adjust grievances and jurisdictional disputes of the type involved in the Slocum case, that Board does not have like exclusive jurisdiction over the claim of an employee that he has been unlawfully discharged. Such employee may proceed either in accordance with the administrative procedures prescribed in his employment contract or he may resort to his action at law for alleged unlawful discharge if the state courts recognize such a claim."

Under the principle set forth in the *Fawcett* case, if plaintiff is seeking money damages for wrongful discharge from his job as electrician with the Railroad, he should pursue his claim in a court of law and not in a court of equity, unless equity takes jurisdiction on other matters involved in the case. However, in considering the other matter involved here we find that plaintiff is seeking reinstatement into the Union, as a result of which it becomes necessary to interpret his right under the agreement between the defendant Railroad and de-

fendant Union. In this situation this case comes directly within the decision set forth in the case of *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239, holding that disputes, grievances and claims of employees arising out of agreements drawn in consonance with the Railway Labor Act must be presented before the National Railroad Adjustment Board.

The case of *Moore v. Illinois Central R. Co.*, 312 U.S. 630, on which plaintiff depends, is of no assistance to him in this particular case, for it sets forth rather clearly that where a person is seeking money damages for wrongful discharge his course of action must be pursued in a court of law, and not in a court of equity.

Since this court has no jurisdiction either to determine damages for wrongful discharge, if any, or to decide the right of reinstatement into the Union, it is not necessary for the court to consider defendants' contention that plaintiff's complaint did not set forth sufficiently a valid cause of action, although it might be said that plaintiff did fail entirely in many respects in this regard, namely, in failing to plead any contract guaranteeing him against discharge or making his employment other than at will, in failing to allege exhaustion of the grievance machinery of his employment contract, in failing to plead the constitution and by-laws of the Union in question, or any other source of a right to retain membership in the Union, or to be reinstated therein, in failing to plead any reason why his remedies at law are inadequate to compensate him for the losses asserted, and in failing to plead any property rights, the protection of which would require his restoration to such membership. The court is therefore of the opinion that at this point it has no jurisdiction in this matter, and that

plaintiff, insofar as his claim of reinstatement into the Union is concerned, must pursue his claim in the form of a proceeding before the National Railroad Adjustment Board, and insofar as his claim for wrongful discharge is concerned, must pursue his claim of right before a court of law.

Since plaintiff's remaining prayers for relief flow out of the matter of jurisdiction on the questions of wrongful discharge and reinstatement, they too must be resolved in the proceedings suggested above.

In view of the foregoing, the defendants' preliminary objections will be sustained.

ORDER OF COURT

And now after argument before the court en banc, defendants' preliminary objections to plaintiff's complaint in equity are sustained, and the complaint is dismissed, without prejudice.

.....

Eo die, exception noted to plaintiff and bill sealed.

..... [SEAL]

Judge

APPENDIX C.

The pertinent section of the Railway Labor Act, 45 U.S.C., par. 153, Sec. First (i) follows:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in the manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

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On Appeal from the Supreme Court of Pennsylvania

MOTION OF THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY TO DISMISS

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On Appeal from the Supreme Court of Pennsylvania

MOTION OF THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY TO DISMISS

The Pittsburgh & Lake Erie Railroad Company, a respondent, pursuant to Rule 16 of the revised rules of the Supreme Court of the United States, moves that the appeal from the final judgment of the Supreme Court of Pennsylvania be dismissed on the ground that the judgment rests on an adequate non-federal basis.

STATEMENT

This is an appeal from the final judgment of the Supreme Court of Pennsylvania entered on April 20, 1959, reported in 395 Pa. 380, 150 A.2d 530, affirming per curiam the decree of the Court of Common Pleas of Allegheny County, Pennsylvania, dismissing appellant's complaint without prejudice, on the opinion of the lower court dated February 24, 1958, reported in 16 Pa. District & County 2d 489.

Appellant was an employee of The Pittsburgh & Lake Erie Railroad Company (hereinafter called "railroad") and his employment relations were governed by a collective bargaining agreement between the railroad and International Brotherhood of Electrical Workers Local No. 1305 (hereinafter called "union"). This collective bargaining agreement contained union shop provisions requiring those employees of the railroad covered by it to maintain their financial standing as regular dues-paying members of the union as a condition of continued employment. On October 20, 1957, appellant filed a complaint in equity in the Court of Common Pleas of Allegheny County, Pennsylvania, asserting inter alia, that on December 14, 1955, the railroad terminated appellant's employment after notice from the union that he was not in good financial standing; that he had tendered and paid all dues, reinstatement fees and fines assessed against him by the union prior to the termination of his employment; that the union had refused to reinstate him into membership and the railroad had refused to reinstate him into employment; and praying that the court compel the union to reinstate him into membership and the railroad to reinstate his employ-

ment, and that they jointly or severally be compelled to pay him damages and the costs of the proceedings.

The union and the railroad separately filed preliminary objections that the court was without jurisdiction of the subject matter and the complaint failed to state a cause of action upon which relief could be granted. Prior to the hearing on the preliminary objections, appellant amended the complaint and withdrew his request seeking reinstatement to his position with the railroad, but leaving the complaint otherwise unchanged.

On February 24, 1958, by appropriate order, the Court of Common Pleas of Allegheny County sustained the preliminary objections and dismissed the case without prejudice, filing an opinion supporting its action. The appellant then appealed to the Supreme Court of Pennsylvania which, after argument, affirmed per curiam the decree of the Court of Common Pleas on the opinion of the lower court. Appellant seeks to bring the case to this court from the final judgment of the Pennsylvania Supreme Court.

ARGUMENT

While appellant mistakenly invokes the jurisdiction of this court under 28 U.S.C. 1257(2), since this appeal does not draw in question the validity of the statute of any state, the appeal will be treated herein as if it were a petition for a writ of certiorari pursuant to 28 U.S.C. 1257(3).

By affirming the decree of the Court of Common Pleas on the opinion of Judge Cercone, the Pennsylvania Supreme Court may be considered as having adopted the reasoning of the lower court for dismissing plaintiff's action. While that opinion addresses itself to a consideration of the application of the Railway Labor Act, it also states unequivocally that the complaint "did fail entirely in many respects (to set forth sufficiently a valid cause of action), namely, in failing to plead any contract guaranteeing him against discharge or making his employment other than at will, in failing to allege exhaustion of the grievance machinery of his employment contract, in failing to plead the constitution and by-laws of the Union in question, or any other source of a right to retain membership in the Union, or to be reinstated therein, in failing to plead any reason why his remedies at law are inadequate to compensate him for the losses asserted, and in failing to plead any property rights, the protection of which would require his restoration to such membership." The opinion thus gives five grounds which the court considered under Pennsylvania law to be sufficient basis for dismissing the complaint.

It is fundamental that this court will not review a final judgment of a state court, if the state court's judg-

ment, although embodying a ruling on a federal question, finds support in adequate state grounds apart from the federal question; *Fox Film Corp. v. Muller*, 296 U.S. 207, 80 L.Ed. 158, 56 S.Ct. 183; *Flournoy v. Wiener*, 321 U.S. 253, 88 L.Ed. 708, 64 S.Ct. 548; *Herb v. Pitcairn*, 324 U.S. 117, 89 L.Ed. 789, 65 S.Ct. 459; *Buck v. California*, 343 U.S. 99, 96 L.Ed. 775, 72 S.Ct. 502; *Edelman v. California*, 344 U.S. 357, 97 L.Ed. 387, 73 S.Ct. 293.

To establish the adequacy of the non-federal grounds for dismissing the complaint herein, it is necessary to refer to but two of the lower court's reasons for dismissal. The opinion states that a valid cause of action was not set forth because, inter alia, the appellant failed "to allege the exhaustion of the grievance machinery of his employment contract". In *Transcontinental and Western Air, Inc. v. Koppal*, 345 U.S. 653, 97 L.Ed. 1325, 73 S.Ct. 906, this court made it plain that if applicable local law requires an employee to exhaust his administrative remedies under his employment contract in order to sustain his cause of action, he must show that he has done so. The quoted language of the state court's opinion is a holding that the complaint was insufficient to sustain a cause of action under Pennsylvania law. There can be no doubt that this is an adequate state ground for dismissal.

The second such adequate ground is the holding that the complaint was defective in that it failed "to plead any reason why his remedies at law are inadequate to compensate him for the losses asserted". After appellant amended his complaint in equity, the only cause of action asserted against the railroad was for damages for wrongful discharge. This is a common law action and not one in equity: *Moore v. Illinois Central R. Co.*,

312 U.S. 630, 85 L.Ed. 1089, 61 S.Ct. 754. The lower court was correct in stating that "insofar as his claim for wrongful discharge is concerned, (he) must pursue his claim of right before a court of law". This, too, is an adequate non-federal ground of decision.

The non-federal grounds relied on by the state court independently and adequately support the judgment and, therefore, this court is without jurisdiction to review such judgment. Respondent's motion to dismiss should be granted.

Respectfully submitted,

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FILED
AUG 28 1959
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IN THE

Supreme Court of the United States

NO. 300

OCTOBER TERM, 1959

GEORGE J. WAGNER, Appellant

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICIANS, LOCAL #1305, an unincorporated union, and THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

On Appeal from the Supreme Court of Pennsylvania

BRIEF IN OPPOSITION TO MOTION OF PITTSBURGH & LAKE ERIE RAILROAD COMPANY TO DISMISS APPEAL

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IN THE

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NO. 300

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INTERNATIONAL BROTHERHOOD OF ELECTRICIANS, LOCAL #1305, an unincorporated union, and THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

On Appeal from the Supreme Court of Pennsylvania

BRIEF IN OPPOSITION TO MOTION OF PITTSBURGH & LAKE ERIE RAILROAD COMPANY TO DISMISS APPEAL

Pursuant to Rule 16 of the revised rules of the Supreme Court of the United States, George J. Wagner, appellant, files this memorandum brief in opposition to the motion of The Pittsburgh & Lake Erie Railroad Company, a respondent, heretofore filed to dismiss appeal.

The said respondent either inadvertently or deliberately misrepresented, misquoted and wrongfully concluded that the cause below was dismissed upon any other ground except that exclusive jurisdiction of the cause was vested in the National Railroad Adjustment Board. This Honorable Court is respectfully referred to the exact wording of the opinion of the trial court,

which was sustained per curiam by the Supreme Court of Pennsylvania, as it appears in Appendix B, of the Jurisdictional Statement filed herein at pages 13 through 18. The Common Pleas Court very plainly says that "— it is not necessary for the court to consider—" the other questions raised by the defendants because the court is "—of the opinion that at this point it has no jurisdiction in this matter, and that the plaintiff, insofar as his claim of reinstatement into the Union is concerned, must pursue his claim in the form of a proceeding before the National Railroad Adjustment Board—", and "Since plaintiff's remaining prayers for relief flow out of the matter of jurisdiction on the questions of wrongful discharge and reinstatement, they too must be resolved in the proceedings suggested above."

The cases cited by the respondent allegedly supporting the motion to dismiss are all completely inapposite to the issue presented on this appeal for the reason that all other comments by the lower court relative to defendant-respondents' contentions going to matters other than jurisdiction are obiter dicta only and do not constitute adequate and independent non-federal grounds for dismissal of the plaintiff's complaint. The lower court clearly indicates that regardless of any alleged inadequacies in the pleading of the complaint, it had no jurisdiction over the matter.

Wherefore respondent's motion to dismiss should be denied.

Respectfully submitted,

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[redacted]

FILE COPY

Supreme Court, U.S.
FILED
SEP 8 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

No. 300

OCTOBER TERM, 1959

George J. Weiss, Appellant

v.

Electrical Boilermaking Erection Local No. 1305, an unincorporated association, and The Pittsburgh & Lake Erie Railroad Company

On Appeal from the Supreme Court of Pennsylvania

MOTION OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 1305, TO DISMISS

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IN THE

Supreme Court of the United States

No. 300

OCTOBER TERM, 1959

GEORGE J. WAGNER, *Appellant*,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICIANS, LOCAL NO. 1305, an unincorporated union, and THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

On Appeal from the Supreme Court of Pennsylvania

MOTION OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 1305, TO DISMISS

Appellee International Brotherhood of Electrical Workers, Local No. 1305, pursuant to Rule 16 of the revised rules of the Supreme Court of the United States, moves that the appeal from the judgment of the Supreme Court of Pennsylvania be dismissed on the grounds that it does not present a substantial federal question and that the judgment rests on an adequate non-federal basis.

QUESTIONS PRESENTED

1. Is any substantial federal question involved when, on a complaint in equity seeking specific performance of

a railroad collective bargaining agreement, *and alleging no other source for the rights asserted*, the Supreme Court of Pennsylvania held that the National Railroad Adjustment Board possessed exclusive jurisdiction, and limited appellant's access to the state courts in a suit based on such a contract to an action in a court of law rather than equity, for damages for wrongful discharge?

2. Did the judgment sustaining preliminary objections to appellant's complaint in equity, and dismissing the same without prejudice, rest on an adequate non federal basis, in that the opinion of the trial court, approved by the Supreme Court of Pennsylvania, noted numerous aspects of the complaint's deficiency in failing to state a cause of action under Pennsylvania pleading standards?

STATEMENT

In this action appellant purported to sue upon a collective bargaining agreement between The Pittsburgh & Lake Erie Railroad Company and International Brotherhood of Electrical Workers[1], Local No. 1305, appellees herein. Although the courts below held that this agreement was insufficiently pleaded, the rights asserted and relief sought by the complaint in equity were predicated upon no other basis. The complaint simply recited (paragraph 3) that there was a "union shop labor relations contract", "by the terms of which said contract the employment rights of plaintiff and other members of the said local union were defined and protected".

The gist of the complaint was that appellant had been improperly discharged by the Railroad Company on the basis of erroneous representations by the local union that he had not complied with the union membership require-

[1]Erroneously referred to as International Brotherhood of "Electricians" in the record herein

ments of the collective bargaining agreement. As originally framed, the complaint sought mandatory injunctive relief compelling appellant's reinstatement to membership in the local union, and restoration by the Railroad Company to a position as electrician in its employ. In addition, he sought monetary relief in the form of lost earnings, additional damages for unspecified "inconveniences, loss of opportunities and advantages", and costs of the proceedings.

Appellees filed preliminary objections based upon lack of jurisdiction of the subject matter of the action, by virtue of the exclusive jurisdiction of the National Railroad Adjustment Board, and failure to state a cause of action. Immediately prior to the hearing on the preliminary objections appellant filed an amendment to his complaint abandoning that portion of his action seeking reinstatement to his position with the Railroad but leaving the complaint otherwise unchanged.

On February 24, 1958, the Court of Common Pleas of Allegheny County, sitting as a court of equity *en banc*, filed its opinion and order sustaining the preliminary objections and dismissing the case without prejudice. This action was affirmed by the Supreme Court of Pennsylvania *per curiam*, on the opinion of the trial court, and it is that judgment that appellant here seeks to review.

ARGUMENT

I. No Substantial Federal Question is Involved

The decision of the Pennsylvania Supreme Court is in complete conformity with the principle established by this court in *Sheam v. Delaware, L. & W. R. Co.*, 339 U. S. 239, and *Order of Railway Conductors v. Southern R. Co.*, 339 U. S. 255, and uniformly applied in innumerable subse-

quent decisions of the federal and state courts, to the effect that exclusive jurisdiction to interpret and enforce railroad collective bargaining agreements is vested in the National Railroad Adjustment Board. The narrow exception to the *Slocum* doctrine, illustrated by *Moore v. Illinois Central R. Co.*, 312 U. S. 630, was not disregarded by the courts below, the trial court's opinion pointing out that appellant might indeed sue for damages for wrongful discharge, but that he would have to do so in a court of law rather than in equity.

Contrary to appellant's assertion, the Pennsylvania courts did not hold that the Railway Labor Act deprived the state courts of jurisdiction over unincorporated associations. There was no denial of jurisdiction of the person of the local union, but simply a denial of jurisdiction of the subject matter, i.e., interpretation and enforcement of a railroad collective bargaining agreement. And certainly no federal question is involved in the refusal to permit appellant to maintain an action at law for damages in a state court of equity.

As noted in our introductory Statement herein, appellant chose to predicate his complaint solely on the collective bargaining agreement, and pleaded no other source of any right to be reinstated in the local union. Undoubtedly, if the agreement had been properly pleaded, either verbatim or in substance, it would have been apparent that it did not even deal with the question of rights of membership, and reinstatement thereto, in the local union. And had appellant sought reinstatement on the basis of the union's constitution and by-laws, which traditionally define the rights and obligations of members of unincorporated labor organizations, there would of course have been no question of jurisdiction in the Adjustment Board. But this the appellant steadfastly refused to do, either by amendment of his complaint after the filing of the prelim-

inary objections, or by refiling his suit after the objections were sustained without prejudice. The Pennsylvania courts were thus left with only an action for specific performance of the collective bargaining agreement, dismissal of which for lack of jurisdiction of the subject matter clearly presents no substantial federal question on this appeal.

Just as the *Moore* case, an action at law for damages for wrongful discharge, fails to support the jurisdiction of the Pennsylvania equity court because appellant here did not bring that type of action, so the cases of *International Association of Machinists v. Gonzales*, 356 U. S. 617, and *United Auto Workers v. Russell*, 356 U. S. 634, fail to support jurisdiction over appellant's action for mandatory equitable relief enforcing his alleged rights under the collective agreement. The *Russell* case was a tort action, for damages, for malicious interference with employment. The *Gonzales* case was based on alleged wrongful expulsion from the union in violation of the membership contract (i.e., the constitution and by-laws). They establish nothing more than that if a different set of facts were present, and properly pleaded, appellant might be able to establish jurisdiction of a court of law over an action against the union for damages. They do not support jurisdiction of a court of equity to grant mandatory injunctive relief on a claim based on a railroad collective bargaining agreement.

II. The Judgment Rests on an Adequate Non-Federal Basis

The opinion of the trial court, approved by the Pennsylvania Supreme Court in its *per curiam* opinion, lists numerous respects in which the complaint was deficient and failed to state a cause of action under Pennsylvania pleading requirements. Although the trial court's order sustaining the preliminary objections without prejudice af-

afforded appellant an opportunity to cure those deficiencies, he chose not to do so, and instead argued the adequacy of the complaint on appeal.

As this Court said in *Herb v. Pitcairn*, 324 U. S. 117, 125:

> "Before we may undertake to review a decision of the court of a State it must appear affirmatively from the record, not only that the Federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the Federal question was necessary to the determination of the cause."

Here, as pointed out in the trial court's opinion, the complaint was deficient in at least five particulars, any of which would constitute an adequate non-federal ground for the sustaining of preliminary objections and dismissal without prejudice. Although purporting to rely on the collective agreement, appellant failed to plead it either verbatim or in substance, or refer to any provision of it which would guarantee him against discharge without cause, or make his employment other than at will. He failed to allege exhaustion of the grievance machinery of the contract. While seeking reinstatement to membership in the union, he failed to plead its constitution and by-laws, which would normally be the only source of a right to retain or be reinstated to membership. He failed to plead any property rights in his union membership, which would be the only basis for the exercise of equity jurisdiction to interfere with the internal affairs of an unincorporated association. And while seeking the aid of the state equity court, he failed to plead the lack of any other adequate remedy, the additional prerequisite for maintaining a class action.

It is thus clear on the record that the judgment of the Supreme Court of Pennsylvania is supported by numerous

and adequate non federal grounds; that the decision of the questions of jurisdiction of the subject matter, while quite correct and raising no such substantial federal question as to merit review by this Court, was not "necessary to the determination of the cause"; and that this appellee's motion to dismiss should therefore be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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